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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2010-28
)	(Inspection No. 313078669)
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
Complainant,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A; APPROVAL
vs.)	AND ORDER
)	
OCEAN PACIFIC BUILDERS INC.,)	
)	
Respondent.)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent OCEAN PACIFIC BUILDERS, INC. ("Respondent") having reached a full and
complete settlement of the above-captioned contested case presently pending before the Hawaii
Labor Relations Board ("Board") stipulate and agree as follows:

On or about January 13, 2010 through January 19, 2010, the Director, by and

through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 2251 Kapili Road, Koloa, Hawaii 96756.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on July 12, 2010 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$2,100.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 2251 Kapili Road, Koloa, Hawaii 96756.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.

5. The violations and corresponding characterizations as stated in the Citation are affirmed. See Exhibit A.

6. The Director reduces the aggregate penalty from \$2,100.00 to \$1,785.00

which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.


DATED: Honolulu, Hawaii, March 21, 2011.

OCEAN PACIFIC BUILDER INC.


KERRY OTIS
President

APPROVED AS TO FORM:

INTERIM DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


ROBYN M. KUWABE
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 425

DATED: March 22, 2011


JAMES B. NICHOLSON, Chair


SARAH R. HIRAKAMI, Member


NORMAN K. KATO II, Member

Director, Department of Labor and Industrial Relations v. Ocean Pacific Builders Inc., OSH 2010-28 (Insp. No. 313078669) – Stipulation and Settlement Agreement

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7006 0100 0002 8176 2415

Citation and Notification of Penalty

To:
Ocean Pacific Builders Inc
and its successors
75-6060 Kuakini Hwy #K-3
Kona, HI 96740

Inspection Number: 313078669
Inspection Date(s): 01/13/2010- 01/19/2010
Issuance Date: 07/12/2010
OSHC ID: F9171
Optional Report No.: 00810
Inspection Type: Complaint
Scope of Inspection: Partial Inspection

Inspection Site:
2251 Kapili Rd
Koloa, HI 96756

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

PEARL IMADA IBOSHI, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Ocean Pacific Builders Inc
75-6060 Kuakini Hwy #K-3
Kona, HI 96740

The hazard referenced in Inspection Number 313078669 for the violation identified as
Citation 1 and Item 2b was corrected on or about 11/3/10.
How corrected: tightened up harnesses - See attached letters.

The hazard referenced in Inspection Number 313078669 for the violation identified as
Citation 1 and Item 1 was corrected on or about 11/3/10.
How corrected: He was asked to step down - See attached letters.

The hazard referenced in Inspection Number 313078669 for the violation identified as
Citation 1 and Item 2a was corrected on or about 11/3/10.
How corrected: tightened up harnesses - See attached letters.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Kerry Otis
Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/12/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313078669

Inspection Dates: 01/13/2010-01/19/2010

Issuance Date: 07/12/2010



Citation and Notification of Penalty

Company Name: Ocean Pacific Builders Inc

Inspection Site: 2251 Kapili Rd, Koloa, HI 96756

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

An employee was observed working on a low sloped roof approximately 40 feet above the ground. There was no type of fall protection system in place thus exposing the employee to a potential fall hazard. A fall to a lower level exposes the employee to potential serious injuries and death.

29 CFR 1926.501(b)(13) states "Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502."

Location: Job site

Date By Which Violation Must be Abated:

07/19/2010

Penalty:

\$ 1,500.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Ocean Pacific Builders Inc
Inspection Site: 2251 Kapili Rd, Koloa, HI 96756

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1926.502(d)(17) [Refer to chapter 12-121.2, HAR] was violated because:

The employee's full body harnesses were not being worn correctly. The full body harnesses did not fit snugly on the wearer's body and the attachment points were located near the wearer's waist line. Improperly fitted full body harnesses exposes the employees to injuries in the event the full body harnesses were to deploy.

29 CFR 1926.502(d)(17) states "The attachment point of the body belt shall be located in the center of the wearer's back. The attachment point of the body harness shall be located in the center of the wearer's back near shoulder level, or above the wearer's head."

Location: jobsite

Date By Which Violation Must be Abated:	07/19/2010
Penalty:	\$ 600.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313078669

Inspection Dates: 01/13/2010-01/19/2010

Issuance Date: 07/12/2010



Citation and Notification of Penalty

Company Name: Ocean Pacific Builders Inc
Inspection Site: 2251 Kapili Rd, Koloa, HI 96756

Citation 1 Item 2b Type of Violation: **Serious**

29 CFR 1926.503(c) [Refer to chapter 12-121.2, HAR] was violated because:

Inadequate knowledge of fall protection was indicated by full body harnesses being worn incorrectly by employees, and not being able to recognize fall protection hazards while working on a roof approximately 40-feet high. A fall to a lower level exposes the employees to potential serious injuries.

29 CFR 1926.503(c) states "Retraining. When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (a) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

- (1) Changes in the workplace render previous training obsolete; or
- (2) Changes in the types of fall protection systems or equipment to be used render previous training obsolete;
or
- (3) Inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill."

Location: Jobsite

Date By Which Violation Must be Abated:

07/19/2010


PEARL IMADA IBOSHI
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Ocean Pacific Builders Inc
Inspection Site: 2251 Kapili Rd, Koloa, HI 96756
Issuance Date: 07/12/2010

Summary of Penalties for Inspection Number 313078669

Citation 1, Serious	= \$	2,100.00
TOTAL PENALTIES	= \$	2,100.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.